IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 18247 of 2003(V)

PETITIONER:

G.SREEKRISHNA BHAT, S/O.SUBARAYA BHAT,
RESIDING AT GUMPE OF BAYAR VILLAGE,
KASARAGOD TALUK, POST BAYAR.

BY ADV. SMT.T.D.RAJALAKSHMI.

RESPONDENTS:

1. **G.DUGGAMMA, W/O. LATE ACHUTHA BHAT.**
2. **G.SUBRAHMAYA BHAT,**
   S/O. LATE SHRI ACHUTHA BHAT.
3. **G.MADHAVA BHAT,**
   S/O. LATE SHRI ACHUTHA BHAT.

   ALL ARE RESIDING AT GUMPE OF BAYAR VILLAGE,
   KASARAGOD TALUK, POST BAYAR.

BY ADV. SRI.K.G.GOURI SANKAR RAI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18247/2003:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE **SUIT FILED BEFORE THE MUNSIFF'S COURT, KASARAGOD BY THE RESPONDENTS AS O.S. NO. 254/1999 (COPY).**

EXT.P.2: COPY OF THE **INTERIM REPORT FILED BY THE COMMISSIONER DT. 04/01/2000 IN O.S. NO. 254/1999 OF MUNSIFF'S COURT, KASARAGOD.**

EXT.P.3: COPY OF THE **OBJECTION FILED BY THE DEFENDANTS TO THE COMMISSIONE'S INTERIM REPORT DTD. 04/01/2000 IN O.S. NO. 254/1999 OF MUNSIFF'S COURT, KASARAGOD.**

EXT.P.4: COPY OF THE **WORK MEMO FILED BY THE DEFENDANT IN O.S. NO. 254/99 OF MUNSIFF'S COURT, KASARAGOD DTD. 30/07/99.**

EXT.P.5: COPY OF THE **INTERIM REPORT FILED BY THE COMMISSIONER DT. 05/10/2000 IN O.S. NO. 254/99 OF MUNSIFF'S COURT, KASARAGOD.**

EXT.P.6: COPY OF THE **OBJECTION DTD. 16/10/2000 FILED BY THE DEFENDANTS TO THE COMMISSIONER'S REPORT DT. 05/10/2000 IN O.S. NO. 254/99 OF MUNSIFF'S COURT, KASARAGOD.**

EXT.P.7: COPY OF THE **FINAL REPORT FILED BY THE COMMISSIONER DTD. 10/07/01 IN O.S. NO. 254/99 OF THE MUNSIFF'S COURT, KASARAGOD.**

EXT.P.8: COPY OF THE **OBJECTION DTD. 10/08/01 FILED TO THE COMMISSIONER'S TD. 10/07/2001 FILED ON BEHALF OF THE DEFENDANT IN O.S. NO. 254/1999 OF THE MUNSIFF'S COURT, KASARAGOD.**

W.P.(C). NO.18247/2003:

EXT.P.9: COPY OF THE **DEPOSITION OF THE TALUK SURVEYOR IN O.S. NO. 254/1999 ON THE FILE OF THE MUNSIFF'S COURT, KASARAGOD.**

EXT.P.10: COPY OF THE **ORDER IN I.A. NO. 1484/2001 IN O.S. NO. 254/99 DT. 11/04/2003 PASSED BY THE MUNSIFF'S COURT, KASARAGOD.**

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 18247 OF 2003

Dated this the 2nd day of July, 2007

JUDGMENT

The fervent and persuasive submissions of Sri.E.R.Venkiteswaran notwithstanding, I am unable to agree with him when he submits that Ext.P10 impugned order warrants correction by this court and that too under the visitorial jurisdiction under Article 227 of the Constitution which is to be exercised only under exceptional circumstances. In my opinion the interest of the petitioners also is taken care of by the learned Munsiff who has observed that it is open to the petitioner to adduce evidence so that he will be able to substantiate those points on which the commission report is apparently not adequate. The challenge against Ext.P10 will fail. However, the learned Munsiff is directed to permit the petitioner when the suit goes for trial to adduce whatever evidence in substantiation of the objections he has raised to the commissioner's report and after the trial is over the court shall take a decision initially on the question whether there is inadequacy in the commissioner's report. Confirmation of the impugned order by this Court will not stand in the way of the Munsiff in taking a decision, if he is convinced that the petitioner's complaint that the commissioner's report is inadequate has some substance. Final judgment in the suit will

be delivered by the learned Munsiff only after an order is passed regarding the adequacy of the commissioner's report.

PIUS C. KURIAKOSE, JUDGE

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